IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1425 of 1997

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AGARWAL STEEL WORKS

Versus

SORATH ENGINEERING PVT.LTD.

Appearance:

1. Civil Revision Application No. 1425 of 1997

MR SURESH M SHAH for Petitioner No. 1

MR MEHUL S SHAH for Petitioner No. 1

MR SANDEEP N BHATT for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 27/04/2004

ORAL JUDGEMENT

The petitioner is the original defendant of Summary Suit No.1/1994, which is filed by the present

respondent-original plaintiff. The said suit is filed for recovery of certain amount. In the aforesaid suit, on behalf of the respondent an application was submitted for granting unconditional leave to defend the said suit. The trial Court came to the conclusion that the defendant has admitted plaintiff's debit balance with him for Rs.4,58,072/- and the trial Court ultimately, granted leave to defend on condition that the defendant shall deposit Rs.4,58,072/-. Against the aforesaid order, the petitioner has filed present revision application.

2) At the time of admitting this revision, this Court granted stay of the said order on condition that the petitioner shall deposit a sum of Rs.2,50,000/in the Trial Court within the stipulated time and such amount shall be invested in a nationalized bank in fixed deposit, initially for a period of one year and in event of necessity, even amount may be reinvested from time to time.

3) At the time of hearing of this revision application, Mr.Shah submitted that since this Court has directed the petitioner to deposit Rs.2,50,000/-, the petitioner may be allowed to contest the suit by modifying the order of the trial Court and instead of trial Court's order by which the defendant is asked to deposit Rs.4,58,072/-, leave to defend may be granted on depositing Rs.2,50,000/-.

4) Learned advocate for the respondent submitted that at least such deposited amount should be allowed to be withdrawn by the respondent-original plaintiff. Considering the consensus prevailing between the parties, following order is passed :

The order of the trial Court is partly modified and the defendant is now granted leave to defend the suit on depositing Rs.2,50,000/-, which he has already deposited as per the earlier order of this Court. The respondent-original plaintiff is entitled to withdraw the aforesaid amount, which is deposited as per the order of this Court, along with accrued interest on said amount. However, such withdrawal will be subject to the final outcome of the suit. The learned advocate for the respondent has also stated that in case the suit is dismissed or decree is passed for a lesser amount, whatever amount the defendant has withdrawn will be repaid so that such withdrawal may not cause any prejudice to the plaintiff in any manner. Under these circumstances, the defendant is granted leave to defend the suit.

5) The order of the trial Court is accordingly modified and the defendant is granted leave to defend the suit on condition that he will deposit Rs.2,50,000/-- instead of Rs.4,58,072/- as ordered by the trial Court. Accordingly, this Civil Revision Application is partly allowed. Rule is made absolute accordingly with no order as to costs.

(P.B.Majmudar,J.)

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